Court No.1

Writ Petition No. 2258 (M/S) / 2001.

Laxman Singh …….. Petitioner.

Versus

District Judge, Pithoragarh

and others. ……..Respondents.

Hon'ble P.C. Verma, J.

This is a writ petition filed by the petitioner, challenging the order dated 25.04.2001 passed by the District Judge, Pithoragarh in appeal under Section 9 of the U.P. Public Premises (Eviction of unauthorised Occupants) Act, 1972. The said appeal was filed by the petitioner against the order dated 25.4.2000 passed by the Prescribed Authority under Sec. 4 of the said Act holding the petitioner to be unauthorised occupant and directing the petitioner to vacate the premises and an order was also passed by Prescribed Authority under sec. 7 of the said Act imposing penal rent on the petitioner at the rate of Rs. 3,000/- per month.

The dispute relates to plot No. 1286. Sri Jagannath was the owner of the plot in dispute who died in 1982. On 24.11.1979, an agreement to sale was executed in favour of the petitioner by late Sri Jannath and possession of the land was transferred to the petitioner. Petitioner claims that by virtue of Sec.164 of Zamindari Abolition and Land Reforms Act he became transferee of the land. Section 164 of U.P.Z.A. and L.R. Act reads as under:-

> "S.164.Transfer with possession by a bhumidhar to be deemed a sale.- Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of any engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Secs. 154 and 163 shall apply".

The learned counsel for the petitioner has filed an affidavit to show that he does not possess the land more than twelve and half acres. Therefore, Section 164 of the U.P.Z.A. and L.R. Act is not attracted. However, Sec. 163 of the said Act stands deleted and Sec. 164 stands statue-book.

The dispute arose after the death of Sri Jagannath when his son Sri Basant Lal sold the property in favour of a Government, for an institution on 06.8.1982. Petitioner was not aware about this sale deed and continued to enjoy the possession. The petitioner came to know about the said sale deed when notice under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 was served on him. He filed the objection in response to the notice and contested the case on the aforementioned grounds. The Prescribed Authority rejected the contention of the petitioner relying on the sale deed in favour of the State Government by Basant Lal son of Sri Jagannath. The District Judge also took the same view and affirmed the order of the Prescribed Authority.

The learned counsel for the petitioner submits that once question of title was raised and the petitioner was a bonafide transferee under Section 164 of the U.P.Z.A. And L.R. Act, he could not have been held to be an unauthorised occupant and it was not proper for the prescribed Authority to have referred the matter for decision of title.

After service of notice, the petitioner ought to have filed a suit for cancellation of said sale deed and declaration of his title. In my opinion, without there being cancellation of sale deed by a competent court, the Prescribed Authority was not wrong in holding the property to be public property. The question as to whether the sale deed could have been executed by Basant Lal, in the facts and circumstances of the case when the petitioner became bonafide transferee of the land question under Sec.164 of U.P.Z.A. and L.R. Act was to be decided by the competent court in the present proceedings. Therefore, I provide that the petitioner may file a suit for cancellation of sale deed and to get his title declared. Since the petitioner prima facie appears to be bonafide transferee, therefore, I further provide that if such suit is filed within a period of one month, the court concerned may pass appropriate order on application under order XXXIX Rules 1 and 2 of the C.P.C. within 15 days from the date of filing of the suit. And for one and half month, the petitioner shall not be dispossessed from the land in dispute and no recovery shall be made from the petitioner.

Subject to above, the petition is disposed of finally.

(P.C. Verma, J.)

14.6.2001

P.Singh.